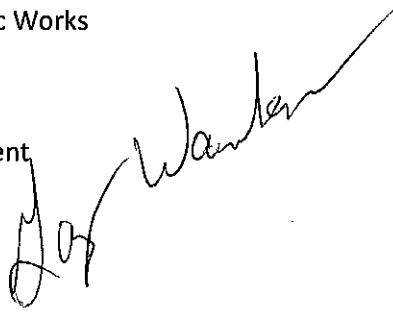


**City of Minneapolis**  
**Request for Committee Action**

**To:** Transportation & Public Works  
**Date:** 4/5/2016  
**Referral:** Ways & Means  
**From:** Public Works Department  
**Prepared by:** Gary Warnberg  
**Presented by:** None  
**File type:** Action  
**Subcategory:** Bid



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**Subject:**

Approval of Official Publication No. 8201 Bids for 6th Avenue North Street Reconstruction Project S.P. 141-220-005.

**Description:**

Acceptance of the low responsive bid of Max Steininger, Inc. (OP 8201) in the amount of \$1,726,831.79 to furnish and deliver all labor, materials and incidental necessary for the 6<sup>th</sup> Avenue North Street Reconstruction Project for the Minneapolis Public Works Department, as follows:

**Grand Total Base Bid: \$1,726,831.79**

**The apparent low bidder did not meet MNDOT DBE requirements. Please refer to the enclosed memo.**

Terms are net-30 days

F.O.B.: Destination

Further recommend proper Officers be authorized and directed to execute a contract for this project, all in accordance with our specifications.

**Previous Actions:**

None

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**Ward/Address:**

Not Applicable

**Background/Analysis:**

Tabulation of five (5) bids received on Official Publication No. 8201 Bids for 6<sup>th</sup> Avenue North Street Reconstruction Project S.P. 141-220-005.

**Financial Review:**

**No additional appropriation required, amount included in current budget.**

**Attachments:**

1. Memo
2. Tabulation Sheet



## Minnesota Department of Transportation

Office of Civil Rights, MS 170  
395 John Ireland Boulevard  
Saint Paul, MN 55155

March 16, 2016

Max Steining, Inc  
3080 South Lexington Avenue  
Eagan MN 55121

**SUBJECT: SP 141-220-005, Minn Proj No TA 2716 (051)** Project Location: 6<sup>th</sup> Avenue N Street  
Reconstruction

Dear Mr. Kathuria,

Max Steining, Inc has met the Disadvantaged Business Enterprise (DBE) participation goal on the above-referenced project. Therefore, the Minnesota Department of Transportation's Office of Civil Rights (OCR) has cleared this project today, March 16, 2016. MnDOT is currently reviewing the remaining requirements for contract award.

Please note that Minnesota Statute §337.10 requires prime contractors and all subcontractors on building and construction contracts to promptly pay their subcontractors, service providers and material suppliers within ten (10) days of their receipt of payment from MnDOT. Additionally, subject to any withholdings specified in contract and retainage agreements, such prime contractors and subcontractors are required to make monthly progress payments to all subcontractors and material suppliers. Moreover, MnDOT requires that you report on the monthly progress payments made to all your subcontractors, suppliers and service providers, including truckers and independent contractors. Enclosed is a copy of the **Contractor Payment Form**, which your firm must complete and submit (or an approved alternative) as it makes progress payments to all the subcontractors and suppliers it is utilizing on the project, regardless of their tier or DBE status. This Form must be submitted to the Office of Civil Rights even if there is no DBE participation on the project. The Contractor Payment Form must be prepared in duplicate, and you should submit one copy to the Project Engineer and one to the Office of Civil Rights within ten (10) days of any payments made to a subcontractor. You should be aware that if this Form is not submitted, payments may be withheld.

Furthermore, please note that **prior to** any final payment on this contract, you must submit to our office a notarized **DBE Total Payment Affidavit** (copy enclosed) verifying the DBE participation on the project. You must prepare this Affidavit in duplicate and send originals to our office and the Project Engineer.

Please keep a copy of this document in your files for submission of the ongoing required reports.

Alvin Hopson has been assigned to this project, he can be reached at (651) 366-3076.

Sincerely,

Mary B. Schmidt  
Deputy Director  
Office of Civil Rights

cc: Jeff Handeland, Project Engineer, City of Minneapolis  
Mark Channer, MnDOT State Aid  
Dan Erickson, MnDOT District State Aid Engineer  
File

Enclosure:  
Contractor Payment Form  
DBE Total Payment Affidavit

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**Minnesota Department of Transportation**

Office of Civil Rights, MS 170  
395 John Ireland Boulevard  
Saint Paul, MN 55155

March 16, 2016

Max Steining, Inc  
3080 South Lexington Avenue  
Eagan MN 55121

**SUBJECT: SP 141-220-005, Minn Proj No TA 2716 (051) Project Location: 6<sup>th</sup> Avenue N Street Reconstruction**

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Sincerely,

Mary B. Schmidt  
Deputy Director  
Office of Civil Rights

cc: Jeff Handeland, Project Engineer, City of Minneapolis  
Mark Channer, MnDOT State Aid  
Dan Erickson, MnDOT District State Aid Engineer  
File

Enclosure:  
Contractor Payment Form  
DBE Total Payment Affidavit

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**Minnesota Department of Transportation**

395 John Ireland Boulevard  
Saint Paul, MN 55155

February 12, 2016

Nate Stone  
Veit & Company, Inc.  
14000 Veit Place  
Rogers MN 55374

RE: S.P. 141-220-005  
Reconstruction of 6<sup>th</sup> Ave N with Preservation of Historic Pavers and Loading Docks,  
Installation of Sidewalks from 5<sup>th</sup> St N to the end of Street North of Washington Ave

Dear Mr. Stone:

The Minnesota Department of Transportation (MnDOT) has determined that the bid by Veit & Company, Inc. (Veit) on State Project (S.P.) 141-220-005 (Project) is not responsible. The Good Faith Efforts (GFE) submission by Veit to the MnDOT Office of Civil Rights (OCR) demonstrates that Veit's bid did not attain the Project's 21.3% Disadvantaged Business Enterprise (DBE) goal. **The GFE submission fails to demonstrate that Veit made adequate good faith efforts to meet the DBE goal.**

To satisfy the DBE program requirements, the bidder must either (1) meet the DBE goal, or (2) demonstrate adequate good faith efforts to meet the DBE goal. This means that the bidder must show that it took all necessary and reasonable steps to achieve the DBE goal which, by their scope, intensity and appropriateness, could reasonably be expected to obtain sufficient DBE participation. The bidder must demonstrate compliance with these requirements within 5 business days of being notified that it is the apparent low bidder (ALB) on a project.

**Project DBE Goals & Veit Statement of Good Faith Efforts**

Bid Amount:	\$ 1,644,660.90	
Project Goal:	\$ 350,312.77	(21.3%)
Achieved Goal:	\$ 148,786.40	(9%)
Difference:	\$ 201,526.37	(12.3%)

Veit submitted Good Faith Efforts documentation to MnDOT in a timely manner.

The DBE program guidelines for demonstrating good faith efforts are outlined in 49 C.F.R. Part 26 Appendix A. Veit did not demonstrate that it took all reasonable and necessary steps to achieve the DBE goal as these efforts were not intense or appropriate to obtain sufficient DBE participation.

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### **Solicitation**

Veit's submission shows that it solicited 84 firms by email on December 7, 2015, 17 of which were DBE firms. Veit then sent out another solicitation email to 9 firms on December 14, 2015, 1 of which was a DBE firm; the DBE firm was not part of the original 17 DBEs solicited. Phone calls for solicitation were conducted to 16 firms on December 30, 2015, of which 9 were DBE firms. Veit was not following up with its solicitations to DBE firms; instead it appears that new DBE firms were solicited with each outreach. One of the DBE firms that Veit solicited, A & A Millwork, Inc., is not certified in any highway-heavy scopes of work.

A copy of the e-mail that was provided to DBE firms was not included in Veit's GFE package. A review of the DBE Directory by OCR showed 131 DBEs in the DBE Directory that were ready, willing and able to complete the scopes of work for this project.

Veit did not demonstrate that it solicited through all reasonable and available means to DBE firms and did not make adequate follow-up attempts.

### **Providing Information**

Veit's submission did not indicate what information was provided to DBEs. Veit did not indicate what portions of work were selected for DBE participation, establish flexible timeframes for performance, and provide adequate information about plans, specs or requirements of the contract, so that the DBE can submit a well-informed bid and the prime can increase its DBE participation. Because Veit did not submit evidence demonstrating any of the above, OCR cannot find that Veit made a good faith effort to obtain DBE participation.

### **Negotiation**

Veit's submission did not demonstrate negotiation with DBE firms. Veit's submission showed that it rejected Highway Solutions, Inc. because another DBE, Grove Tech of MN, Inc., was selected but Grove Tech of MN, Inc. is not DBE-certified.

The DBE firm O'Malley Construction was rejected because of price and prior poor performance, and Veit accepted a higher quote from a non-DBE firm.

Veit did not provide additional information on follow-up actions to its original solicitations. It is the bidder's responsibility to demonstrate that it negotiated in good faith with interested DBEs. Veit failed to demonstrate that negotiation with DBEs took place.

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### **Rejection of DBE as Unqualified**

Veit solicited O'Malley Construction. Veit then rejected O'Malley's quote due to its perceived poor performance on other prior projects. It is unclear why Veit solicited O'Malley if it anticipated rejecting its quotes. Rejecting DBEs as unqualified without sound reason is impermissible under 49 C.F.R. Part 26, Appendix A, IV E.

### **Performance of Other Bidders**

There were four other bidders on this project. Two of the bidders committed to meeting the 21.3% DBE goal, and the average commitment for participation was 16.1%. Veit committed to 9%.

Based on Veit's failure to meet the DBE goal or demonstrate that it made adequate good faith efforts as required by the DBE program, Veit is deemed to be a non-responsible bidder for this project.

### **Administrative Reconsideration**

The Federal regulations governing the administration of the DBE Program allow a contractor who has failed to meet the requirements as stated above the opportunity for administrative reconsideration. 49 C.F.R. § 26.53, (d)(1)-(5) reads in part:

*"...(d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.*

- 1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument considering the issue of whether it met the goal or made adequate good faith efforts to do so.*
- 2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.*
- 3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.*
- 4) You must send the bidder/offeror a written decision or reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.*

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- 5) *The result of the reconsideration process is not administratively appealable to the Department of Transportation."*

Veit will be afforded the opportunity, if desired, to meet in person with a panel that serves as MnDOT's reconsideration official to determine whether you made adequate good faith efforts to meet the goal on this project. If Veit desires an administrative reconsideration of this decision, it must be requested in writing within five (5) business days of the date of this letter to Susan Mulvihill, Deputy Commissioner at MnDOT, 395 John Ireland Blvd., MS 120, St. Paul, MN 55155 and provide a copy to Kim Collins, Office Director, Office of Civil Rights, 395 John Ireland Blvd., St. Paul, MN 55155. This request may be submitted via FAX to (651) 366-4795. If you have further questions or comments regarding this decision, please contact me at (651) 366-3150.

Sincerely,



D. Kimberly Collins  
Director, Office of Civil Rights  
Minnesota Department of Transportation

Cc: Sean Skibbie, MnDOT OCR  
Alvin E. Hopson III, MnDOT OCR  
Dan Erickson, MnDOT DSAE  
James Grube, Hennepin County Engineer

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## Purchasing Division - Bid Tabulation Summary

Official Publication No. 8201

Bids for 6 <sup>th</sup> Avenue North Street Reconstruction
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Purchasing Buyer:	David Schlueter
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Department:	Public Works
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Department Contact:	Jeff Handeland
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Bids Due: 10 AM, Local Time, December 17<sup>th</sup>, 2015[illegible]